

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

MARY ESTER MACFARLANE,	:	
individually and as the	:	
Administrator of the Estate of	:	
D. KENNETH MACFARLANE,	:	
PATRICK MACFARLANE,	:	
SCOTT MACFARLANE,	:	
CHRISTOPHER MACFARLANE,	:	
and KELLY GILL,	:	
Plaintiffs,	:	
	:	
v.	:	Docket No. 1:99-cv-100
	:	
CANADIAN PACIFIC RAILWAY	:	
COMPANY, as successor in	:	
interest to Delaware & Hudson	:	
Railroad, and NATIONAL	:	
RAILROAD PASSENGER	:	
CORPORATION,	:	
Defendants.	:	
	:	

MEMORANDUM OF DECISION

Defendant and Plaintiff disagree as to whether New York or Vermont law applies to this action. (Compare Papers 93 and 111 with Paper 98) For reasons discussed below, the law of New York, where the accident occurred, governs liability. With regard to damages, however, the law of Vermont applies.

BACKGROUND

This action results from an accident at a railroad highway grade crossing in Putnam, New York on January 19,

1997 that killed the vehicle's driver, Gregory Kean, and his passenger, D. Kenneth MacFarlane. The facts underlying the accident are set forth in previous decisions of this Court (Papers 36 and 44), and familiarity with these facts is assumed.

This action is a wrongful death action brought by the subrogated UIM insurance carrier for D. Kenneth MacFarlane ("Farm Family") and members of the MacFarlane family against Defendant National Railroad Passenger Corporation ("Amtrak"). Plaintiffs allege Amtrak operated its train at an unsafe rate of speed and failed to give an adequate auditory warning of its approach prior to the fatal collision. The Court granted summary judgment to Amtrak on both claims. On appeal, the Court of Appeals reversed and remanded in part, holding summary judgment should not have been granted on the auditory warning claim.

A trial commenced on Plaintiffs' remaining claim on December 10, 2003. On the eve of trial, the parties submitted trial memoranda in which they disagreed on the law to be applied. Specifically, Defendant contends New York law applies, while Plaintiffs argue that of Vermont applies. The Court (Sessions, C.J.) heard counsel's arguments regarding the choice of law question, although it remains unclear

whether the Court ruled on the merits of the issue.¹ The trial ended in a mistrial after the jury remained deadlocked. Thereafter, on January 23, 2004, the matter was reassigned.

Following the mistrial and reassignment, the parties' disagreement over the applicable law resurfaced. Because the prior treatment of the issue remains unclear and, more importantly, we are no longer on the eve of trial, the Court will revisit the issue.

DISCUSSION

When confronted with a choice-of-law issue, "[a] federal district court must look to the choice-of-law rules of the state in which it sits." Aro Chem. Int'l v. Buirkle, 968 F.2d 266, 269 (2d Cir. 1992) (citing Klaxon Co. v. Stentor Elec. Mfg., 313 U.S. 487, 496 (1941)). Vermont has adopted the Restatement (Second) of Conflict of Laws test and held that the choice of law in a tort action that implicates states beyond Vermont will be determined by which state "has the most significant relationship to the occurrence and the parties." Amiot v. Ames, 166 Vt. 288, 292 (1997).

¹Notably, Chief Judge Sessions indicated he was inclined to apply Vermont law and stated he would write and publish a decision to that effect; however, no such decision was written prior to reassignment of this case. It is also unclear whether the inclination to apply Vermont law was based on the merits or on the fact that the issue was raised for the first time on the eve of trial.

To determine which jurisdiction has the most significant relationship, courts must consider the general principles set out in § 6 of the Restatement (Second), including: (a) the needs of the interstate and international systems, (b) the relevant policies of the forum, (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, (d) the protection of justified expectations, (e) the basic policies underlying the particular field of law, (f) certainty, predictability, and uniformity of result, and (g) ease in the determination and application of the law to be applied.

Amiot, 166 Vt. at 293 (citing Restatement (Second) § 6)).

The policies set forth in § 6 are general. Miller v. White, 167 Vt. 45, 48 (1997). To aid in applying these general principles, the Restatement (Second) provides a more specific list of factors to consider in tort cases:

(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered.

Amiot, 166 Vt. at 293 (citing Restatement (Second) § 145(2)).

As the Vermont Supreme Court emphasized in Miller, "the Restatement (Second) calls for an issue-by-issue determination of choice of law questions. Thus, it is possible that within one case, the law of one jurisdiction will apply to

one issue and the law of another jurisdiction to another issue.” 167 Vt. at 49. The Miller court illustrates this principle with the example of a negligence action, in which the standard of care and damages may be determined by the laws of different jurisdictions, depending on where the parties are domiciled and their relationship is centered. Id. (citing Restatement (Second) §§ 157(2), 171 cmt. b.). Consequently, the Court will consider separately the issues of liability and damages.

Liability

New York and Vermont law differ slightly with regard to the applicable standards of care in railroad grade crossing accidents. Compare N.Y. R.R. Law § 53-a with Vt. Stat. Ann. tit. 23, §§ 1071-1073. In addition, the doctrine of pure comparative negligence in New York differs from the modified comparative negligence scheme of Vermont. Compare N.Y. C.P.L.R. § 1411 with Vt. Stat. Ann. tit. 12, § 1036.

The Vermont Supreme Court has recognized that in the context of conflicting conduct-regulating laws, “the law of the jurisdiction where the tort occurred will generally apply because that jurisdiction has the greatest interest in regulating behavior within its borders.” Miller, 167 Vt. at 49 (citing Cooney v. Osgood Mach., 81 N.Y.2d 66 (1993)); see also Restatement (Second) § 157(2) (where conflict concerns

regulation of primary conduct, e.g., standard of care, normally local law of state where injury occurred would apply). This principle militates in favor of applying New York law regarding liability, for New York has a greater interest in regulating conduct at the grade crossing located within its borders in Putnam, New York. It is undisputed that both the accident and the conduct allegedly causing the accident occurred in New York. The facts of this case simply do not present an occasion to deviate from this general rule.

In urging the Court to apply Vermont law, Plaintiffs cite Miller and Myers, cases in which the Vermont Supreme Court declined to apply the law of the place of injury. This case, however, is distinguishable. In Miller, both plaintiff and defendant were residents of and domiciled in Vermont, where their relationship was centered. They embarked upon a trip to Quebec where plaintiff was injured in a car accident due to defendant's alleged negligence. The court in Miller ruled Vermont law applied despite the occurrence of the accident in Quebec. 167 Vt. at 53. The court reasoned that the parties' common residency and domicile where their relationship was centered outweighed the jurisdictional contacts with Quebec. Id.; see also Myers, 168 Vt. 432, 437 (1998). Here, however, Plaintiffs and Defendant do not both reside in Vermont and do not have a relationship centered in

Vermont. More important, the court in both Miller and Myers was not presented with differing standards of care, but instead addressed competing “postevent remedial rules.” In both cases the court was clear that the jurisdiction where the tort occurred has less interest when the conflict-of-law relates to limitations on damages, as opposed to conduct-regulating laws. See Miller, 167 Vt. at 49; Myers, 168 Vt. at 437.

Damages

New York and Vermont law differ with regard to the damages available in a wrongful death action. Compare Gonzalez v. New York City Hous. Auth., 77 N.Y.2d 663, 668 (1991) (restricting damages to pecuniary losses and denying recovery for grief, loss of society, and loss of fellowship and consortium) with Mears v. Colvin, 171 Vt. 655, 657 (2000) (holding wrongful death claim allows recovery for loss of companionship, lost intellectual, moral, and physical training, and the loss of care, nurturing, and protection).

As mentioned above, when determining which conflicting remedial laws should apply in the context of a wrongful death action, the jurisdiction in which the tort occurred has diminished interest, as the Vermont Supreme Court explained in Myers:

Limitations of damages . . . have little or nothing to do with conduct. They are concerned not with how people

should behave but with how survivors should be compensated, [therefore,] the state of the place of the wrong has little or no interest in such compensation when none of the parties reside there.

168 Vt. at 437 (citing Reich v. Purcell, 67 Cal.2d 551 (1967) (Traynor, C.J.)); see also Miller, 167 Vt. at 49 (holding that domicile of the parties is "the most significant contact bearing on the determination of the relevant law" when analyzing competing remedial rules). In this case, unlike Miller and Myers, the parties do not share a common domiciliary jurisdiction. Defendant Amtrak's principal place of business is the District of Columbia, where it is incorporated; the beneficiaries are located in Vermont, Indiana, and Massachusetts; and the subrogated UIM carrier, Farm Family, is incorporated under the laws of New York. Thus the Court must weigh the competing interests of these jurisdictions.

Plaintiffs are correct that Vermont has a strong interest in this action. While two of Mr. MacFarlane's beneficiaries reside outside Vermont, the majority of his beneficiaries, including his spouse, are domiciled in Vermont. As the domicile of the majority of beneficiaries, Vermont has "a significant interest in assuring proper compensation . . . because the 'social and economic repercussions of personal injury' will occur in [this] domicile." Miller, 167 Vt. at 52 (citation omitted).

Defendant counters by arguing that the subrogated UIM carrier, Farm Family, retains a greater interest in the outcome than the beneficiaries and Farm Family's incorporation in New York militates in favor of applying New York law. This argument is unpersuasive. To be sure, Farm Family does have an interest in this action, but it's rights are those of a subrogee, having succeeded to the rights of the beneficiaries, the majority of whom are Vermont residents. Moreover, Farm Family's relationship with the beneficiaries is centered in Vermont, as the contract of insurance was issued in Vermont under the laws of Vermont. The fact that Farm Family is incorporated under the laws of New York is not sufficient to outweigh the greater interests of Vermont.

The Court concludes that New York has little interest in the determination of whether its remedial rules should govern this action against a non-New York Defendant because the majority of Plaintiff beneficiaries are domiciled in Vermont and the other interested party, the subrogated UIM carrier, stands in their shoes.

CONCLUSION

_____The law of New York, where the accident occurred, governs liability. With regard to damages, however, the law of Vermont applies. _____

SO ORDERED.

Dated at Brattleboro, Vermont this ____ day of September, 2004.

J. Garvan Murtha, U.S. District Judge